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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Interpretive Letter #864**  
**August 1999**  
**12 USC 92**

May 19, 1999

Kirk P. Flores  
Counsel  
ABN AMRO North America, Inc.  
135 South LaSalle Street  
Chicago, ILL 60674-9135

Re: Insurance Agency Activities in Illinois and Michigan Under 12 U.S.C. § 92

Dear Mr. Flores:

This is in response to your letter requesting confirmation that ABN AMRO Insurance Services, Inc. (the "Agency"), a wholly-owned subsidiary of LaSalle Bank National Association, Chicago, Illinois (the "Bank"), may sell insurance through satellite offices of the Agency in the states of Illinois and Michigan, in addition to the Agency's "place of 5,000" location, as permitted under Illinois and Michigan law. Based on the facts and representations set forth in your letter and on additional information and representations you have provided, as described herein, we conclude that, under 12 U.S.C. § 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the manner permissible for insurance agencies generally in the states of Illinois and Michigan and as authorized by the Agency's state insurance licenses in these states.

**I. BACKGROUND.**

For purposes of this request, the factual situation you describe involves a national bank engaged in the banking business in Illinois. After submission of the appropriate operating subsidiary application to the OCC and insurance agent license application to the Illinois Department of Insurance, and approval thereof, the Bank established an insurance agency subsidiary in a "place of 5,000" in which the Bank is located and doing business. The Bank and the Agency operate in conformity with the requirements of section 92.

## II. DISCUSSION

### A. Section 92 Authorizes Insurance Sales Activities for National Banks

Under 12 U.S.C. § 92, a national bank located and doing business in a place with a population of 5,000 or fewer may act as an agent for state-authorized insurance companies by soliciting and selling insurance, collecting premiums, and receiving commissions and fees for these services from the insurance company.<sup>1</sup> By its terms, section 92 does not require a bank's insurance solicitation and sales activities to occur within the "place of 5000." Specifically, there is no restriction as to either the location of customers or the methodology of sale.

Congress explicitly vested the OCC in section 92 with the authority to prescribe rules and regulations concerning national banks' insurance sales activities.<sup>2</sup> Since 1963, the OCC has interpreted the reach of section 92 to permit a branch office of a bank to act as agent for insurance companies if the branch is located in a place the population of which does not exceed 5,000 inhabitants, even if the main office of the bank is located elsewhere.<sup>3</sup>

The Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson* examined the language of section 92 and found that section 92 suggests "a broad, not limited permission" for national banks to act as the agent for insurance sales.<sup>4</sup> Other courts have followed a fundamentally similar approach in establishing that while the bank or branch must be located in a "place of 5,000," section 92 does not

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<sup>1</sup> Section 92 states:

In addition to the powers now vested by law in national banking associations...any such association located and doing business in any place the population of which does not exceed five thousand inhabitants...may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent....

12 U.S.C. § 92.

<sup>2</sup> See *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 32; 116 S. Ct. 1103, 1108 (1996); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629 (7<sup>th</sup> Cir. 1995).

<sup>3</sup> 12 C.F.R. § 7.1001 (formerly 12 C.F.R. § 7.7100).

<sup>4</sup> 517 U.S. 25, 32; 116 S.Ct. 1103, 1108 (1996).

place any geographic restrictions on potential or existing customers to whom a bank or branch may sell insurance pursuant to section 92.<sup>5</sup>

**B. Prior OCC Precedents Analyze the Scope of Insurance Sales Activities Permissible for a Bank Insurance Agency Under Section 92**

Following this judicial precedent, the OCC has interpreted section 92 to permit national banks to engage in a range of insurance agency activities in conformity with section 92's "place of 5,000" framework. The OCC's *First Union Letter* provides an extensive analysis of the scope of activities permissible under 12 U.S.C. § 92. The OCC's letter considers the plain language of the statute, the legislative history, the contemporaneous practices of banks and insurance agents in 1916 when the law was enacted, the OCC's longstanding interpretive ruling under section 92, and recent judicial opinions construing the scope of section 92.<sup>6</sup>

In applying section 92 in the modern context, the OCC found in the *First Union Letter* that section 92, by its literal terms, consistent with Congressional intent and as construed by relevant case law, does not subject national banks soliciting and selling insurance to unique restrictions or disabilities relative to insurance agents generally in a particular state. Further, given the flexibility with which banks and insurance agents operated in 1916, the OCC found it is entirely consistent with section 92's authority and purpose to allow national bank insurance agencies to employ the same variety of marketing resources and tools as are used today by other insurance agencies.

In the *Louisiana Letter*,<sup>7</sup> the OCC considered whether the principles of section 92 set forth in the *First Union Letter* would permit a bank insurance agency that is located in a "place of 5,000" to establish auxiliary or "satellite" offices in locations outside the "place of 5,000." Louisiana law expressly permitted insurance agencies, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown on its insurance license. The OCC concluded that, for a national bank in Louisiana, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish auxiliary locations of the agency outside of the Aplace of 5,000@ and to engage in insurance sales activities at those locations.

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<sup>5</sup> See *Shawmut Bank Connecticut, National Association v. Robert Googins*, 965 F. Supp. 304 (D. Connecticut 1997); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629 (7<sup>th</sup> Cir. 1995); *Independent Ins. Agents v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993).

<sup>6</sup> See *Interpretive Letter No. 753* (November 4, 1996), reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107.

<sup>7</sup> *Interpretive Letter No. 844* (October 20, 1998), reprinted in [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 81-299.

The *First Union Letter* and the *Louisiana Letter* distill several general principles to define the scope of solicitation and sales activities permissible for national banks under 12 U.S.C. § 92.<sup>8</sup>

The [bank insurance] agency located in the “place of 5,000” must be bona fide. Agents will be managed through the agency and the “place of 5,000” will be the agency’s business location for licensing purposes. Each agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, will be available at the “place of 5,000.”<sup>9</sup>

The OCC also has concluded that a bank insurance agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for licensed insurance agencies in the state in which the bank insurance agency operates. This will generally permit the following:

Meetings with customers and solicitations and sales of insurance by the bank’s agents may generally take place at locations inside the “place of 5,000” as well as at locations outside that “place,” provided the agents are managed and paid through the bank agency located in the “place of 5,000” and use that location as the agency’s place of business for licensing purposes (if applicable).

Mailings to advertise and sell insurance may originate from inside or outside of the “place of 5,000” and brochures, leaflets, and other literature alerting potential customers to the bank’s insurance activities may be distributed from location inside and outside of the “place of 5,000,” including other branches of the same bank.

Personnel at bank branches inside and outside of the “place of 5,000” may make referrals to the bank’s insurance agency.

Telephone and cybermarketing may be used and the calls and messages need not originate within the “place of 5,000.”

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<sup>8</sup> The OCC noted in the *First Union Letter* that the principles described are not intended to be exhaustive and recognizes that solicitation and sales techniques may vary with different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union Letter*.

<sup>9</sup> Some of these business records may be maintained and available at the agency in electronic form, with the original hard copy kept in off-site storage.

The bank may contract with third parties to assist the agency's sales activities, including advertising support, direct mail marketing services, telemarketing services, payments processing, and other types of "back office" support.

The OCC noted in the *First Union letter* that section 92 as enacted in 1916 generally described the ways national bank insurance agencies operated -- by soliciting and selling, by collecting premiums, and by receiving commissions and fees for these services-- but did not delineate or curtail how these activities were to be conducted by bank insurance agencies. The letter further provided that ACongress permitted national banks to operate effectively in the insurance business that existed in 1916, and also did not restrain banks= ability to modernize their solicitation and sales methods as needed to remain competitive as the insurance business evolved.@<sup>10</sup> Hence, the *First Union letter* concluded that the proposed insurance agency activities occurring both inside and outside of the Aplace of 5,000" were permissible under section 92.

With respect to the current request, you represent that the Agency=s business location for licensing purposes is in a Aplace of 5,000", and that the Bank and the Agency will continue to conduct their activities in accordance with the above principles set forth in the *First Union Letter*, including conformity with Illinois and Michigan law. Specifically, you indicate that Illinois law permits an insurance agency, including a bank-established agency, to conduct business at locations in addition to the agency=s business location shown in its insurance license. You also represent that Michigan law permits an Illinois-based insurance agency, including a bank-established agency, to establish satellite offices at locations in Michigan. You represent that the Agency is a licensed agency in Illinois, its home state, and in Michigan. You represent that the operations of the Agency will be conducted at satellite office locations that would be permissible under Illinois and Michigan law for nonbank agencies as well as for insurance agencies operated by state banks.

### **C. Illinois and Michigan Law Authorizing Insurance Sales Activities**

The Illinois Department of Insurance ("DOI") has construed Illinois insurance law to permit the establishment of additional offices by firms that are registered as insurance agencies. While Illinois insurance statutes do not expressly address the permissibility of satellite offices, the DOI has concluded such offices are permissible under the statutory scheme.<sup>11</sup> The establishment of additional offices by Illinois registered firms is permitted both in Illinois, and in another state (the "host state") provided the

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<sup>10</sup> *First Union letter, supra* at 33.

<sup>11</sup> See the letter from Andy L. Navarrete, Morgan, Lewis & Bockius LLP, to Les Jenkins, Esq., Illinois Insurance Department (December 16, 1998), and response dated December 15, 1998 (sic), from Mr. Jenkins to Mr. Navarrete (the "DOI correspondence"). Although additional insurance agency offices are referred to as "branch offices" or "branches" in the cited correspondence, we use the term "additional offices" to avoid confusion with the concept of branching as defined in banking law.

firm is in full compliance with licensing and other requirements imposed by the host state.<sup>12</sup> Furthermore, the establishment of additional offices, whether in Illinois or in a host state, does not require any prior approval from the DOI.<sup>13</sup>

The Michigan Insurance Bureau (the “MIB”), like the DOI, has construed Michigan insurance law to permit a Michigan licensed agency to establish additional offices, subject to the proviso that each and every additional office must be staffed by a distinct licensed agent. While Michigan insurance statutes similarly do not expressly address the permissibility of satellite offices, the MIB finds them to be permissible under the applicable statutory scheme.<sup>14</sup> The ability to establish additional offices applies to all Michigan licensed agencies, including an agency located in Illinois that is licensed in Michigan.<sup>15</sup>

Given the foregoing, you have asked us not to object if the Agency, which is located in a place of 5,000 in Illinois, solicits and sells insurance through satellite offices in Illinois and Michigan, as permitted under the laws of those states. As described earlier in this letter, section 92 and the *First Union Letter* do not prohibit national banks from conducting their insurance solicitation and sales activities from outside the “place of 5,000.” In fact, the *First Union Letter* recognizes that national bank insurance agencies located in a “place of 5,000” should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available under state law for licensed nonbank insurance agencies or licensed agents with offices in a “place of 5,000.” Consistent with the principles established in the *First Union Letter*, the *Louisiana Letter* concluded that, for a national bank in Louisiana, where state law expressly contemplates that insurance agencies will operate from more than one location, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish locations of the agency outside of the “place of 5,000” and to engage in insurance sales activities at those locations.

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<sup>12</sup> DOI correspondence.

<sup>13</sup> *Id.* The DOI has orally confirmed to counsel for the Bank that these conclusions apply to bank-established insurance agencies.

<sup>14</sup> See the letter from Sandra M. Cotter, Dykema Gossett LLC, to Charles A. Johnson, Director, Licensing Section, Michigan Insurance Bureau (December 22, 1998), and response dated December 27, 1998, from Mr. Johnson (the “Michigan correspondence”).

<sup>15</sup> Michigan correspondence. The MIB also orally confirmed to counsel for the Bank that these conclusions apply to bank-established insurance agencies.

The current situation is fundamentally the same as that addressed in the Louisiana Letter. Here, Illinois authorities have determined that the law of Illinois permits an Illinois licensed insurance agency to solicit and sell insurance through satellite offices in both Illinois and in other states, and Michigan authorities have similarly determined that the law of Michigan permits the use of satellite offices in Michigan by an Illinois insurance agency that is licensed in Michigan. Thus, the solicitation and sale of insurance by the Agency through satellite offices as described above and in your letter of April 7, 1999, is consistent with the principles of the *First Union Letter*.

### **III. CONCLUSION**

Accordingly, based on the foregoing facts and discussion and on the representations made in your incoming letter, we conclude that under section 92, the Agency, appropriately located in a “place of 5,000,” may solicit and sell insurance in the same manner permissible in Illinois and Michigan for insurance agencies generally and for bank-established insurance agencies in particular. If you should have any questions, please feel free to contact Ellen Broadman or Virginia Rutledge at (202) 874-5210.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel